ATKINS *v.* COMMONWEALTH.

Jan. 19, 1922.

[110 S. E. 379.]

1. Seduction (§ 43*)—Evidence Sufficient to Show Offense Committed under Promise of Marriage.—In a prosecution for seduction under promise of marriage, evidence held sufficient to prove that the offense was committed under such promise.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 128.]

2. Criminal Law (§ 823 (2)*)—Instruction on Corroboration of Prosecutrix in Action for Seduction Held Not Objectionable in View of Other Instruction Given.—In a prosecution for seduction, an instruction that accused could not be convicted on the uncorroborated testimony of the prosecutrix, "yet, if the admissions of the accused and other 'surrounding circumstances' corroborate her testimony," etc., when considered with another instruction, was not open to the objection that the court had improperly commented on the weight and sufficiency of the evidence nor as singling out certain facts and basing a verdict thereon.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 735.]

3. Criminal Law (§ 1169 (8)*)—Evidence of Prosecutrix's Statements Not Made in Accused's Presence Held Not Unfavorable to Accused.—In a prosecution for seduction under promise of marriage, evidence of statements made out of court by the prosecutrix, not in the presence and hearing of accused, and not tending to corroborate prosecutrix's story of her proposed trip to get married was harmless and not unfavorable to accused.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 593.]

Error to Circuit Court, Halifax County.

W. W. Atkins was convicted of seduction and he assigns error. Affirmed.

Jas. H. Guthrie, of South Boston, for plaintiff in error.

Jno. R. Saunders, Atty. Gen., and *J. D. Hank, Jr., Asst. Atty. Gen.,* for the Commonwealth.

ELLIS *v.* VIRGINIA RY. & POWER CO.

Jan. 19, 1922.

[110 S. E. 382.]

1. Carriers (§ 316 (3)*)—Burden on Passenger to Show She Was Not Given Time to Alight or Clear Street Car and Reach Safe Place.—The burden was on an injured street car passenger to prove she

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

was not given time to alight, or clear the car and reach a place of safety before it started.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 725.]

2. Evidence (§ 121 (1)*)—Rule as to "Spontaneous Declaration" as Exception to Hearsay Rule Stated.—The practical rule as to the admissibility of "spontaneous declarations" as exceptions to the hearsay rule and as part of the res gestæ is that the declaration must have accompanied the main fact, or must have followed under its immediate propulsion, must bear no evidence of reflection or deliberation, and must have been an undesigned or illustrative incident or part of the litigated act.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 55.]

3. Appeal and Error (§ 1056 (1)*)—Exclusion of Statement Made by Bystander at Time of Accident Harmless in View of Bystander's Testimony.—In an action for injury while alighting from a street car, exclusion of an answer that would have stated what a bystander said to the motorman immediately following the accident held harmless in view of the bystander's testimony.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 596.]

Error to Hustings Court of Richmond.

Action by Lillie P. Ellis against the Virginia Railway & Power Company. Judgment for defendant and plaintiff assigns error. Affirmed.

Bethel & Williams, of Richmond, for plaintiff in error.

E. R. Williams and *T. Justin Moore,* both of Richmond, for defendant in error.

BURFORD *v.* COMMONWEALTH.

Jan. 19, 1922.

[110 S. E. 428.]

1. Jury (§ 94*)—Same Jury May Be Used for Trial of Two Indictments for Different Offenses.—When jurors have been carefully examined on their voir dire, and it has been shown that they are in every respect fair and impartial, and can give the accused a fair trial on merits, they are not disqualified to sit by the fact that, at another time during the term, and on entirely different evidence, they have been compelled as jurors to convict him of an entirely different offense in no way connected with the charge under investigation.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 33.]

2. Criminal Law (§ 424 (6)*)—Fact that Accomplice Has Fled Not Admissible.—It cannot be shown as against a defendant on trial that

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.